



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 18 2013

MEMORANDUM

SUBJECT: 2013 Equal Employment Opportunity Policy Statement

FROM: Gina McCarthy

A handwritten signature in dark ink, appearing to read "Gina McCarthy", is written over the printed name.

TO: All Employees

Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people. I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. The EPA also will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles contained in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines our ability to achieve our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 13 2011

Corrected Version

THE ADMINISTRATOR

U.S. Environmental Protection Agency's Anti-Harassment Policy

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a) submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b) submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c) such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against *anyone* in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.



Lisa P. Jackson

Certification

Case No.
2014-0005-R04

I have read the foregoing attached statement, consisting of 7 pages, and it is true and complete to the best of my knowledge and belief. In making this statement, I understand Section 1001, Title 18 of the U.S. Code which states:

"Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

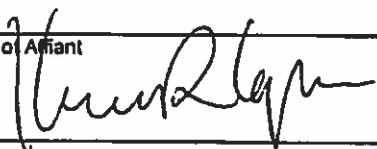
Privacy Act Notice

Privacy Act Notice. The collection of this information is authorized by The Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16; The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a; The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794a; and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the Agency is a party or has an interest; to a government agency in order to obtain information relevant to an Agency decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the Agency to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of Agency finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the National Labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Agency employees and other witnesses.

Declaration

I declare, under penalty of perjury, that the foregoing is true and correct.

Signature of Affiant



Date Signed

7/8/2014

EEO Investigative Affidavit (Witness)

Page No.

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No. Pages

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Case No.

2014-0005-R-04

1. Affiant's Name (First, Middle, Last)

Kenneth LaPierre

2. Employing Facility

Region 4

3. Position Title

Deputy Assistant Regional
Administrator

4. Grade Level

5. Work Address and ZIP+4

61 Forsyth Street, SW
Mail Code: 9T25
Atlanta, GA 30303-8960

6. Unit Assigned

Region 4

Privacy Act Notice

Privacy Act Notice. The collection of this information is authorized by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e-16; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633a; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794a and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the Agency is a party or has an interest; to a government agency in order to obtain information relevant to an Agency decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional

office at your request; to an expert, consultant, or other person under contract with the Agency to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of the Agency's finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the national labor relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for the Agency's employees and other witnesses.

7. Statement

Complainant alleges she was discriminated against and subjected to hostile work environment harassment, based on her race (White), religion (Catholic), and National Origin (Portuguese) when:

a) On August 21, 2013, her 1st level supervisor, Ms. Naima Halim-Chestnut, Region 4 Equal Employment Opportunity Officer, issued a Guidance Notice to her;

b) On October 23, 2013, her supervisor, Ms. Halim-Chestnut, issued a Letter of Reprimand to her;

c) On January 31, 2014, her supervisor, Ms. Halim-Chestnut, refused to immediately remove the Letter of Reprimand from her official personnel file.

Complainant further alleges she experienced continued harassment and retaliation when:

d) On March 11, 2014, her supervisor, Ms. Halim-Chestnut, sent a harassing email to her;

e) On May 7, 2014, Mr. Kenneth LaPierre, Deputy Assistant Regional Administrator, issued her a Notice of Proposed Suspension for failure to follow supervisory instructions and breach of privacy and disclosure of confidential information.

Q1. What is your full name? (first, middle initial and last)

A1. Kenneth R. Lapierre

Q2. State your position title, pay grade, work unit, work location address, work telephone number, and work email address.

A2. Assistant Regional Administrator, ES-00, Office of Policy and Management, U.S. Environmental protection Agency, Region 4, 61 Forsyth Street, Atlanta, GA 30303

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed

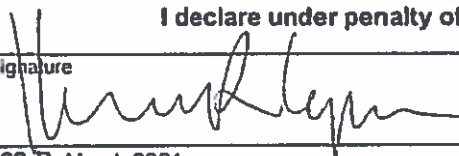
7/8/2014

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- Q3. Are you aware of Ms. McKinley's race? If yes, identify her race (presumed) and indicate when and how you became aware of her race. If not, what do you perceive her race to be?
- A3. I presumed Ms. McKinley's race as white. I became aware of this when we first met around the 2008 timeframe.
- Q4. What is your race?
- A4. White
- Q5. Are you aware of Ms. McKinley's religion? If yes, identify her religion (presumed) and indicate when and how you became aware of her religion. If not, what do you perceive her religion to be?
- A5. I did not know nor did I perceive of Ms. McKinley's religion until it was disclosed to me as part of this process.
- Q6. What is your religion?
- A6. Roman Catholic
- Q7. Are you aware of Ms. McKinley's national origin? If yes, identify her national origin (presumed) and indicate when and how you became aware of her national origin. If not, what do you perceive her national origin to be?
- A7. I did not know nor did I perceive of Ms. McKinley's national origin until it was disclosed to me as part of this process.
- Q8. What is your national origin?
- A8. American. I was born and raised in Rhode Island. My parents were both born and raised in Rhode Island.
- Q9. Are you aware of Ms. McKinley being involved in prior EEO activity? If so, indicate when and how you became aware of her prior EEO activity.
- A9. No.
- Q10. Have you been named by Ms. McKinley as a Responding Management Official (RMO) or witness in a prior EEO complaint that she filed? If so, identify the case number(s); identify the issue(s) involved in the complaint; and explain your involvement in her EEO activity?
- A10. No.
- Q11. When and how did you become aware of this EEO complaint?
- A11. Not applicable

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature



Date Signed

7/8/2014

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- Q12. Have you participated in any EEO activity? (EEO activity includes filing a charge, testifying, assisting another, or participating in a discrimination proceeding; or otherwise opposing discrimination.). Please identify the case number(s) and date(s) for your EEO activity.
- A12. It a regular and routine part of my duties as both the Assistant Regional Administrator and the regional Deputy Civil Rights Official to ensure that all Region 4 employees are aware of our Civil Rights and Diversity and Inclusion programs and that the region complies with all EEO requirements.

In addition to this proceeding, in March 2014, I provided an affidavit in Case No. 2013-0090-R04.

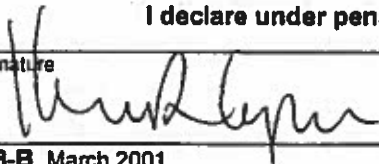
- Q13. What was your work relationship with Ms. McKinley from August 2013 through March 14, 2014? (Immediate supervisor, second level supervisor, no work relationship, etc.)
- A13. Second Level Supervisor.

Claim c): Ms. McKinley alleges she was subjected to discrimination and hostile work environment harassment based on her race (White), religion (Catholic), and National Origin (Portuguese) when: c) On January 31, 2014, her supervisor refused to immediately remove the Letter of Reprimand from her official personnel file.

- Q14. Did Ms. McKinley or anyone else request that you remove her Letter of Reprimand, dated October 23, 2013, from her official personnel file? If so, indicate who made the request; when and why the request was made; and what response, if any, you provided to them and why.
- A14. Yes. In November 2013, I met with Ms. McKinley to discuss her concerns. During our discussion, she requested that she be allowed to transfer to another position within Region 4, either permanently or temporarily, and that the Letter of Reprimand issued by her supervisor be removed from her official personnel file. During our meeting, I relayed to Ms. McKinley that I would work to find her a temporary (detail) assignment for a 90 or 120 day period to assist her in her career development goals but that I was unable to support her request for a permanent reassignment. I told her that she would need to use the competitive selection process to be reassigned permanently. I made the decision to support Ms. McKinley's request for a temporary detail assignment to help relieve the immediate stress of the situation and not because of any discriminatory actions or unfair treatment by her immediate supervisor. I was clear with Ms. McKinley that the detail would be temporary and that she would have to return to her position of record in the Office of Civil Rights when it was completed. In my discussions with Ms. McKinley about the Letter of Reprimand staying in her file, she initially stated that she was okay with it staying in her file for some period of time but not the full two year period. In a subsequent discussion, Ms. McKinley made it clear to me that she wanted it removed immediately. I informed Ms. McKinley that it is my personal belief that two years is an

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature



Date Signed

7/8/2014

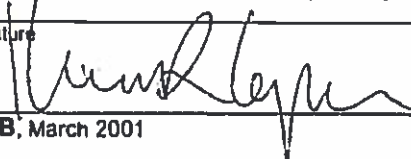
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excessive period of time for the Letter of Reprimand to remain in an official file if the behaviors and actions identified in the reprimand are addressed appropriately by the employee and there are no further occurrences. At that point, Ms. McKinley informed me that she wanted the Letter of Reprimand removed from her file immediately since she felt there was no basis for the action in the first place. We did not agree on this point.

If you were not aware that Ms. McKinley requested that her Letter of Reprimand be removed from her official personnel file, please write "Not Applicable" for answers #15-21.

- Q15. During the period of January through February 2014, did you refuse to remove the Letter of Reprimand immediately? If so, why?
- A15. Yes. I did not remove the Letter of Reprimand from Ms. McKinley's file because I did not agree with her assertion that there was no basis for the letter in the first place. Please see my response to Question #14 of this affidavit.
- Q16. Has Ms. McKinley's Letter of Reprimand been removed from her official personnel file? If so, indicate who removed it; and explain when and why it was removed.
- A16. No. To my knowledge, the Letter of Reprimand is still in Ms. McKinley's personnel file.
- Q17. What policy and/or regulation(s) was/were relied upon in determining to not remove Ms. McKinley's Letter of Reprimand, dated October 23, 2013, from her official personnel file? (Explain what these policies say).
- A17. EPA Order 3120.1 dated 9/20/85. Conduct and discipline. This policy states that official written reprimand's be filed in the employees personnel file for a period up to two years.
- Q18. Was Ms. McKinley's race a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A18. No.
- Q19. Was Ms. McKinley's religion a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A19. No.
- Q20. Was Ms. McKinley's national origin a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A20. No
- Q21. Was Ms. McKinley's EEO activity a factor when her Letter of Reprimand, dated October 23, 2013, was not immediately removed from her official personnel file? If so, explain.
- A21. No

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature 	Date Signed 7/8/2014
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Form 2568-B, March 2001

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Claim e): Ms. McKinley alleges she was subjected to continued harassment and retaliation when: e) On May 7, 2014, Mr. Kenneth LaPierre, Deputy Assistant Regional Administrator, issued a Notice of Proposed Suspension to Complainant for failure to follow supervisory instructions and breach of privacy and disclosure of confidential information.

- Q22. Was Ms. McKinley issued a Notice of Proposed Suspension on May 7, 2014? If yes, please describe your involvement with issuing the Notice of Proposed Suspension to Ms. McKinley. If not, please identify by name, title, and work location the management official(s) who was/were responsible for issuing the Notice of Proposed Suspension to her.
- A22. On May 7, 2014, I issued a Notice of Proposed Suspension to Ms. McKinley for her failure to follow her supervisor's instructions and for a breach of privacy and disclosure of confidential information.
- Q23. Why was a Notice of Proposed Suspension issued to Ms. McKinley on May 7, 2014?
- A23. Ms. McKinley was issued a Notice of Proposed Suspension for her failure to follow her supervisor's instructions and for a breach of privacy and disclosure of confidential information.
- Q24. Ms. McKinley alleges she should not have been issued the Notice of Proposed Suspension because discussing the name of the person who was voluntarily involved in a mediation (not part of an EEO case or investigation) was not confidential information. Is this accurate? Explain.
- A24. No, this is not accurate. The fact that an employee was voluntarily participating in an Alternate Dispute Resolution proceeding is not material to the obligation of all parties and the Office of Civil Rights staff to keep the matter confidential.
- Q25. Ms. McKinley alleges that the penalty of a 5 day suspension is excessive. Explain why a 5 day suspension was proposed instead of a reprimand or shorter suspension.
- A25. In selecting the proposed penalty, I considered all information known to me including the Table of Offenses and Penalties contained in EPA Order 3120.1. I also considered her position, the nature and seriousness of the offense and their relation to her duties, the adequacy and effectiveness of alternative penalties to deter this type of conduct, her length of service and work record, the clarity with which Ms. McKinley was on notice of any directive or instruction. I also considered the fact that in August 2013, Ms. McKinley received a warning letter for similar behavior and that Ms. McKinley also received an Official Reprimand in October 2013 for additional similar behavior.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

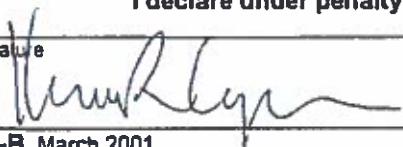
Date Signed

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- Q26. Has a decision letter been issued regarding the Proposed Suspension? If so, indicate when the decision letter was issued; who issued it; and what the decision was regarding the Proposed Suspension.
- A26. I have no knowledge of a decision letter being issued in this matter.
- Q27. What policy and/or regulation(s) was/were relied upon when Ms. McKinley was issued a Notice of Proposed Suspension on May 7, 2014? (Explain what these policies say).
- A27. EPA Order 3120.1 dated 9/20/85. This EPA Order addresses conduct and discipline within EPA.
- Q28. Was Ms. McKinley's race a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.
- A28. No
- Q29. Was Ms. McKinley's religion a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.
- A29. No
- Q30. Was Ms. McKinley's national origin a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.
- A30. No
- Q31. Was Ms. McKinley's EEO activity a factor when she was issued a Notice of Proposed Suspension on May 7, 2014? If so, explain.
- A31. No
- Q32. Please list any other employees under your chain of command who were given a Notice of Proposed Suspension for similar conduct as Complainant during the period May 2012 through May 2014. Please provide each employee's full name, position title, series, pay grade, race (presumed), religion (presumed), and national origin (presumed); indicate whether each employee has any EEO activity, if known; and indicate when each incident occurred.
- A32. None that I am aware of.
- Q33. Please list any other employees under your chain of command who allegedly failed to follow supervisory instructions, breached privacy, and/or disclosed confidential information and were not given a Notice of Proposed Suspension during the period of May 2012 through May 2013. Please provide each employee's full name, position title, series, pay grade, race (presumed), religion (presumed) and national origin (presumed); indicate whether each employee has any EEO activity, if known; and explain why each employee was not issued a Notice of Proposed Suspension.
- A33. None that I am aware of.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature



Date Signed

7/8/2014

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- Q34. Did Ms. McKinley (or anyone acting on behalf of Ms. McKinley) advise you that your actions constituted harassment and/or a hostile work environment? If yes, on what date did you become aware of this allegation; what were you told; and what was your response and why?
- A34. No. The request to complete this affidavit is my first time hearing that Ms. McKinley viewed the Notice of Proposed Suspension that I issued to her as harassment.
- Q35. Are you aware of Ms. McKinley (or anyone acting on behalf of Ms. McKinley) notifying any other management official(s) about the alleged harassment? If so, whom did he/she inform of his/her concerns and on what date did he/she notify the management official?
- A35. No.
- Q36. Was an investigation conducted into Ms. McKinley's allegation of harassment? If so, explain when the investigation was conducted; who conducted the investigation; and what the outcome of the investigation was (ex: discipline was issued)? If an investigation was not conducted into Ms. McKinley's allegation of harassment, explain why an investigation was not conducted.
- A36. Not that I am aware of. The request to complete this affidavit is my first time hearing that Ms. McKinley viewed the Notice of Proposed Suspension that I issued to her as harassment.
- Q37. Have you received training on anti-harassment/hostile work environment while employed by the EPA? If so, when did you receive the training?
- A37. Yes. I completed Equal Employment Opportunity and Civil Rights training on February 15, 2008, and Federal Employee Antidiscrimination Act of 2002 training (NO FEAR) on June 4, 2012.
- Q38. What specific policy or contract provision(s) govern harassment in the workplace? (**Explain what these policies say**).
- A38. U.S. Environmental Protection Agency's Anti-Harassment Policy dated July 13, 2011 – Prohibits harassment of any kind in the workplace.

U.S. Environmental Protection Agency's 2013 Equal Employment Opportunity Policy Statement – prohibits discrimination based on race; color; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. This policy also states that EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment.

----- END OF QUESTIONS -----

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature

Date Signed



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MEMORANDUM

SUBJECT: Notice of Proposed Suspension

FROM: Kenneth R. Lapiere
Deputy Assistant Regional Administrator

Kenneth R. Lapiere 5/17/2014

TO: Lisa McKinley
EEO Specialist

This is to notify you that I propose to suspend you for five (5) calendar days from your position as Equal Employment Opportunity (EEO) Specialist, with the Environmental Protection Agency (EPA), Region 4 in Atlanta, Georgia. If taken, this action will be effective no sooner than ten (10) calendar days from your receipt of this letter. I am proposing this action pursuant to Title 5, United States Code, (U.S.C.) Chapter 75, and Title 5 of the Code of Federal Regulations, Part 752, in order to promote the efficiency of the service. This proposed suspension is based on the charges discussed below:

Charges:

1. Failure to Follow Supervisor's Instructions
2. Breach of Privacy and Disclosure of Confidential Information

Specifications:

On March 11, 2014, while on Detail to the Air Division's Children's Health Section, you sent several email messages to your supervisor, Ms. Naima Halim-Chestnut and others. In your first email sent at 9:22 a.m., you provided information that relates to an upcoming Mediation Training sponsored by the Office of Civil Rights. You stated in this email: "Might want to have aggrieved (for the sake of this communication the employee's name has been removed and will further be referred to as aggrieved) come and talk about her experiences regarding her mediation (that I was working on prior to my detail)." You copied the aggrieved to inform her of your recommendation that she participate in the mediation training. In response to this email, Ms. Halim-Chestnut, replied directly to you and copied Veronica Robertson, only. She thanked you for the update and informed you that the aggrieved had not completed the mediation process and it was not appropriate to ask the aggrieved to participate in the training. Ms. Halim-Chestnut instructed you to provide information that you may have related to mediation training to Ms. Robertson and "no one else."

Despite Ms. Halim-Chestnut's instruction, you responded to her, copying Ms. Robertson, and adding the aggrieved, and two other individuals, Stephen.McKinley@Gexpro.com and gvilla@morganlewis.com. Neither works for EPA or has an agency related reason to receive personal or confidential information about EPA employees who participate in mediation or EEO related process.

As an EEO Specialist, you are held to high standards and expected to carry out the tenets of your duties with professionalism and confidentiality. You have been provided training as an EEO Specialist on your obligation to maintain confidentiality of information related to EEO and ADR. Moreover, you are responsible for overseeing the Region's ADR Program and have been trained on the fact that information surrounding employees who participate in mediation is considered confidential. The record also reflects that you have been admonished and disciplined regarding your inappropriate behavior within the Office of Civil Rights as it relates to sending emails to people who do not have an official and legitimate need to know about EPA business.

In selecting the proposed penalty, I have considered all the information known to me including the Table of Offenses and Penalties contained in EPA Order 3120.1. I have also considered your position, the nature and seriousness of your offense and their relation to your duties, the adequacy and effectiveness of alternative penalties to deter this type of conduct, your length of service and work record, the clarity with which you were on notice of any directive or instruction. I also considered the fact that in August 2013, you received a letter of warning for similar behavior. You also received a letter of reprimand for similar behavior in October 2013.

Breach of confidentiality and professionalism is particularly disturbing in view of your responsibilities as an EEO Specialist and the Region's ADR Coordinator. Due to the nature and seriousness of the misconduct outlined above, I believe that the penalty I am proposing is the best remedy available to promote the efficiency of the federal service.

If your conduct in this matter is attributable to personal or other problems, I advise you to contact the Employee Assistance Program (1-800-869-0276) counselors who are available to EPA employees. The counselors are trained to assist you in dealing with any personal or financial problems, and the information you share with them is strictly confidential.

You have the right to answer this proposed action orally and/or in writing and furnish affidavits and evidence in support of your reply(s). This is not a right to a trial or a formal hearing with an examination of witnesses, but it is an opportunity for you to present any and all reasons why you believe the proposed action should not be implemented. Any written reply(s) and/or written request for an oral reply should be submitted to Ms. V. Anne Heard, Acting Deputy Regional Administrator, no later than ten (10) calendar days after receipt of this letter. If you and/or your representative wish to make an oral reply, you may arrange an appointment with Ms. Heard through Rebecca Cover, (Ms. Heard's secretary) at 404-562-8343. Consideration will be given to extending the time limit for your reply(s) if an acceptable written justification is submitted to Ms. Heard before the reply period ends.

You have the right to present a reply without representation or you have the right to be accompanied, represented, and advised by an attorney or other representative of your choosing. However, you are solely responsible for all costs for any such representation. In selecting a representative, you should avoid individuals who would be disqualified due to conflicts of interest, the priority of the government business, or whose representational duties would create an unreasonable burden to the government. You may choose an Agency employee to represent you if that employee is willing and free to do so. Your choice of a representative must be designated in writing to Ms. Heard as soon as possible.

You will be granted a reasonable amount of official time, if otherwise in a duty status, to review any pertinent material or regulations on which this proposed action is based and to prepare your reply. You must request the use of official time from your supervisor in writing and must receive approval prior to

your actual use of duty time for these purposes. If you wish to review the material upon which this proposed action is based, please contact Carlos Asencio, Human Resources Specialist, at 404-562-8135.

No decision regarding this proposed action has been made or will be made until after the time for your oral and/or written reply(s) expires. Your reply(s), if provided, will be given thorough consideration before a final decision is made. Whether or not you elect to reply, you will be given written notice of the final decision. If you do not understand the procedures involved in this proposed action or if you have any questions, please contact Carlos Asencio at 404-562-8135.

Attachment

ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of this letter.

Lisa McKinley (Signature)

Date

 J. DeLorenzo
Witness

 5/7/14
Date

Employee declined to sign the acknowledgment of receipt.

 Mark Ryan

May 7, 2014



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MEMORANDUM

SUBJECT: Official Reprimand

FROM: Naima Halim-Chestnut, Regional Civil Rights Officer

A handwritten signature in black ink, appearing to be "NHC", written over the name Naima Halim-Chestnut.

TO: Lisa McKinley, EEO Specialist

DATE: October 23, 2013

This memorandum serves as written notice that you are officially reprimanded for refusal to comply with supervisory instructions to cease your inappropriate, disrespectful, unprofessional and disruptive behavior. This reprimand is issued for the efficiency of the federal service and will remain a matter of record in your Official Personal Record for two years from the date you receive it. The facts in support of this reprimand are as follows.

Over the last several months, I have requested repeatedly for you to cease communications that come across as inappropriate, unprofessional, and defiant. On August 21, 2013, I issued you a letter of warning about your behavior and coupled this with a 45 minute discussion with you about your conduct and my expectations of your behavior in the future. In several e-mails, dated throughout September, despite my instructions, you again continued your unprofessional communications and inappropriate conduct by sending inappropriate emails to your supervisor.

Specifically, on September 5, following our weekly phone meeting on your training assignment, you followed up our conversation with a 35 page email to me. In this email, you stated that you were "taken back" that I questioned your ability to conduct training. You were upbeat and supportive of my suggestion to have you lead Civil Rights training for our office on the call; however, the tone and content of your follow-up email was contrary to our conversation. In the 35 page email, you claimed to have 20 years of experience in developing and delivering training, although none referenced work in Civil Rights which was what you and I discussed. You further stated you were doing training "before I was born." Communication of this nature to a supervisor is unprofessional and disrespectful.

After reviewing this email, I again counseled you, instructing you to stop this type of communication/interaction with me. As a result of your description of extensive training experience, I offered you an opportunity to conduct training at an upcoming New Employee Orientation on behalf of the Office of Civil Rights. You turned down this offer, claiming you did not have enough time to prepare. When offered the opportunity to demonstrate the vast experience you claimed to possess, you declined to accept the challenge.

I continued to counsel you on your actions, yet, your disregard of supervisory instructions did not cease. On September 17, 2013, I was copied on correspondence to a team that you led to develop an OCR Diversity Learning Series. In that email, you stated to your group that you would not attend the event. This was the first time you notified me of your intent not to be present at an event that you had responsibility to lead. When I questioned you about your impending absence you indicated that you had an appointment that you could not change. I informed you that your attendance at the event was important. In light of the conflict, I instructed you via email to reschedule the event to a later time. Your response to me was inappropriate and unprofessional.

You disagreed that it was important for you, as leader to attend the event. Furthermore, you stated that "I should know more than anyone if you are a good leader, your team will do just fine in your absence..." Subsequent to this email exchange, you continued to engage in unprofessional, inappropriate and disruptive conduct. First, you were heard slamming your cubicle door and crying. Second, you were heard complaining on the phone about work conditions. Third, you displayed disrespectful conduct at a Water Division Managers meeting that our office were guests at. Specifically, you left the meeting after arriving with your team, you responded to managers' questions in a curt or nonresponsive manner, and you publicly refused to respond when I asked you in the presence of the managers to elaborate on a Civil Rights activity that you led. At the conclusion of the meeting, several managers asked me what was wrong with you and a few of your colleagues questioned their safety around you. Your conduct reflected poorly on yourself and the entire staff of the Office of Civil Rights.

On September 20, 2013, I again tried to have a verbal conversation with you to discuss the circumstances which make this reprimand necessary. At that time, you indicated that you did not want to speak to me about the issue that took place on September 17, 2013 and you did not have anything to say to me about your actions. Your refusal to have discussions with your supervisor is unacceptable and will not be tolerated.

This reprimand is intended to impress upon you the importance of adhering to EPA policies and federal regulation and to dissuade you from engaging in unacceptable behavior in the future. Be advised that any future incident involving this type of behavior will not be tolerated and may result in more severe disciplinary action, inclusive of removal from the federal service. If your conduct is attributable to personal or other problems, I advise you to contact the Employee Assistance Program (770-951-8021 or toll-free at 1-800-869-0276) counselors who are available to EPA employees. The counselors are trained to assist you in dealing with any personal or financial problems. Any information that you share with them is strictly confidential.

You may file a grievance concerning this action under the provisions the EPA Administrative Grievance System, Order # 3110.8 A2, dated April 2, 2001. Your grievance, if you decide to submit one, must be addressed in writing to Ms. Beverly Banister, Acting Deputy Regional Administrator. Your grievance must be filed not later than fifteen (15) calendar days from the date of this memorandum. If you have any questions regarding the procedures for filing a grievance you may contact Carlos Asencio at 404-562-8135.

If you believe that this action was taken in whole or in part because of discrimination based on race, color, religion, sex, national origin, handicap, age, and/or reprisal, you may file an Equal Employment Opportunity (EEO) complaint utilizing EPA's EEO complaint procedures. To do so, you must first contact Ms. Debra Schwartz, Civil Rights Area Director, within forty-five (45) calendar days from the date of this memorandum. Ms. Schwartz can be reached at 702-646-8967.

cc: Human Resources – Employee OPF

7. FORMAL DISCIPLINARY ACTIONS. A formal disciplinary action may be an official written reprimand, a suspension, a change to a lower grade, or removal from the civil service. Records of formal disciplinary actions become a part of the employee's official personnel folder. Supervisors should initiate such actions only after coordinating any proposed action with their servicing Personnel Offices. Detailed information concerning formal disciplinary actions is contained in the paragraphs below.

a. Official Written Reprimand. An official written reprimand is a letter or memorandum issued to an employee by an authorized supervisor or management official to correct an employee's conduct, attitude, work habits, or other factors which have a relationship to his or her employment, and to maintain the efficiency, discipline, and morale of the work force. It is filed in the employee's official personnel folder for a period of up to two years. This type of disciplinary action may be used for a situation or offense which is (1) serious and warrants more than an informal measure, or (2) in the case of repeated infractions of a minor nature. (It should not be confused with the written warning discussed in subparagraph 6c above.) Before issuing an official reprimand, the supervisor must fully discuss the incident with the employee to permit the employee to present his or her side of the situation. If after the employee presents his or her views, the supervisor considers a reprimand to be warranted, the supervisor should prepare the written reprimand in accordance with subparagraph 7a(1) below. (See sample in Figure 1.)

(1) Contents. The following information shall be incorporated in the body of an official reprimand:

(a) A description of the facts in sufficient detail to assure that the employee will fully understand the violation, infraction, misconduct, or other action or omission for which he or she is being reprimanded. The supervisor should include in the reprimand specifics as to times, places, dates, and events, and refer to the discussion mentioned in subparagraph 7a above.

(b) A statement that the document is an official reprimand and that it will be made a matter of record and filed in the employee's official personnel folder for a period not to exceed two years.

(c) A restatement of any former incidents if the reprimand is a follow-up of previous offenses and the action is a continuation of constructive discipline. If the employee failed to take any remedial action previously stipulated, that fact should also be included.

(d) A warning that any future similar occurrence or other misconduct may result in more severe disciplinary measures.

APPENDIX - GUIDANCE ON CORRECTIVE DISCIPLINEDetermining Appropriate Penalties

The Merit System Protection Board, in Douglas vs. Veterans Administration, MSPB (Case No. AT075299006 (April 10, 1981), has outlined a number of factors that should be considered in determining the appropriateness of a penalty. While not exhaustive, those generally recognized as relevant include the following:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) Consistency of the penalty with any applicable agency table of penalties;
- (8) The notoriety of the offense or its impact upon the reputation of the Agency;
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) Potential for the employee's rehabilitation;
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all of these factors will be pertinent in every case, and frequently in an individual case some of the pertinent factors will weigh in the employee's favor while others may not, or may even constitute aggravating circumstances.

Table of Offenses and Penalties

This table should be used as a guide by supervisors in order to facilitate comparable action throughout the Agency in comparable cases. While penalties for offenses will usually fall within the ranges indicated, in unusual circumstances greater or lesser penalties may be applied unless otherwise provided by law. The list of offenses in this table is not meant to be all inclusive. For offenses not listed, penalties may be imposed which are consistent with penalties listed in the table for offenses of comparable gravity. Days always means calendar days.

Nature of Offense	1st Offense	2nd Offense	3rd Offense
1. Attendance-related offenses.			
a. Unexcused tardiness. This includes delay in reporting at the scheduled starting time, returning from lunch and returning after leaving work station on official business. 4th offense may warrant 5-day suspension to removal.	Oral admonishment	Oral admonishment to 1-day suspension	Oral admonishment to 5-day suspension

Nature of Offense	1st Offense	2nd Offense	3rd
<p>b. Absence without leave (AWOL).</p> <p>These penalties generally do not apply to AWOL charged for tardiness of 1/2 hour or less. (See 1a above.) This offense includes leaving the work station without permission.</p> <p>Penalty depends on length and frequency of absences. If absence exceeds 5 consecutive work days, employee may be removed at any time.</p>	<p>Written reprimand to 5-day suspension</p>	<p>1-day to 14-day suspension</p>	<p>5-day suspension to removal</p>
<p>c. Failure to follow established leave procedures.</p>	<p>Written reprimand to 5-day suspension</p>	<p>1-day to 5-day suspension</p>	<p>5-day suspension to removal</p>
<p>2. Breach of safety regulations or practices.</p> <p>a. Where imminent danger to persons or property is not involved.</p>	<p>Written reprimand to 1-day suspension</p>	<p>1-day to 14-day suspension</p>	<p>5-day suspension to removal</p>

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<p>b. Where imminent danger to persons or property is involved.</p> <p>"Persons" includes "self". Penalty depends on seriousness of injury or potential injury and extent or potential extent of damages to property.</p>	Written reprimand to removal	14-day suspension to removal	Removal
<p>3. Breach of security regulations or practice.</p> <p>a. Where restricted information is not compromised and breach is unintentional.</p> <p>b. Where restricted information is compromised and breach is unintentional.</p> <p>c. Deliberate violation.</p>	<p>Oral admonishment to 5-day suspension</p> <p>Written reprimand to removal</p> <p>30-day suspension to removal</p>	<p>Written reprimand to 14-day suspension</p> <p>14-day suspension to removal</p> <p>Removal</p>	<p>5-day suspension to removal</p> <p>Removal</p>
<p>4. Offenses related to intoxicants.</p> <p>Supervisors should follow the procedures</p>			

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<p>outlined in EPA Order 3120.3A, Employee Alcoholism and Drug Abuse Program, prior to taking disciplinary action in these cases.</p> <p>a. Alcohol-related:</p> <p>(1) Unauthorized possession of alcoholic beverages on Government premises or in duty status.</p> <p>(2) Unauthorized use of alcoholic beverages while on Government premises or in duty status.</p> <p>(3) Reporting to or being on duty while under the influence of alcohol.</p> <p>(4) Sale or transfer of an alcoholic beverage while on Government premises or in a duty status or while any person involved is in a duty status.</p> <p>b. Drug-related:</p> <p>(1) Unauthorized possession of a drug or controlled substance while on Government premises or in a duty status.</p>	<p>Written reprimand to 5-day suspension</p> <p>Written reprimand to 14-day suspension</p> <p>Written reprimand to 30-day suspension</p> <p>Written reprimand to removal</p> <p>5-day to 30-day suspension</p>	<p>5-day to 14-day suspension</p> <p>10-day to 30-day suspension</p> <p>14-day suspension to removal</p> <p>Removal</p> <p>14-day suspension to removal</p>	<p>14-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p>

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<p>(2) Unauthorized use of a drug or controlled substance while on Government premises or in a duty status.</p> <p>(3) Reporting to or being on duty while under the influence of a drug or controlled substance.</p> <p>(4) Sale or transfer of a drug or controlled substance while on Government premises or in a duty status or while any person involved is in a duty status.</p>	<p>14-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Removal</p>
<p>5. Making false, malicious or unfounded statements against coworkers, supervisors, subordinates, or Government officials which tend to damage the reputation or undermine the authority of those concerned.</p>	<p>Written reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>
<p>6. Unhygienic practices which annoy or jeopardize the health of others.</p>	<p>Oral admonishment to 5-day suspension</p>	<p>Written reprimand to 14-day suspension</p>	<p>5-day suspension to removal</p>

Nature of Offense	1st Offense	2nd Offense	3rd Offense
7. Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful.	Written reprimand to removal	30-day suspension to removal	Removal
8. Abusive or offensive language, gestures, or other conduct. (Also see "Discourtesy", 9 below.)	Written reprimand to 10-day suspension	5-day suspension to removal	30-day suspension to removal
9. Discourtesy to the public.	Oral admonishment to 5-day suspension	Written reprimand to 10-day suspension	10-day suspension to removal
10. Stealing, actual or attempted; unauthorized possession of Government property or property of others.			
a. Where substantial value is not involved.	Written reprimand to 30-day suspension	14-day suspension to removal	Removal
b. Where substantial value is involved.	14-day suspension to removal	Removal	
11. Using Government property or Government employees in duty status for other than official purposes.	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<p>Penalty depends on the value of the property or amount of employee time involved, the nature of the position held by the offending employee, and other factors.</p> <p>(For misuse of Government vehicles, see 43 below.)</p>			
12. Use of official authority or information for private gain.	14-day suspension to removal	Removal	
13. Failure to obtain required clearance of an official speech or article.	Written reprimand to 5-day suspension	5-day to 14-day suspension	14-day suspension to removal
14. Engaging in private business activities which result in or create the appearance of a conflict of interest.	Written reprimand to removal	20-day suspension to removal	Removal
15. Misuse of official Government credential.	Written reprimand to removal	5-day suspension to removal	10-day suspension to removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
16. Deliberate misrepresentation, falsification, concealment or withholding of a material fact, or refusal to testify or cooperate in an official proceeding.	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
17. Loss or damage to Government property, records, or information. (Also see 44.) Penalty depends on value of property or extent of damage, and degree of fault attributable to the employee.	Oral admonishment to removal	Written reprimand to removal	5-day suspension to removal
18. Offenses relating to fighting. Penalty depends on such factors as provocation, extent of injuries, and whether action was defensive or offensive in nature. a. Threatening or attempting to inflict bodily harm. b. Hitting, pushing, or other acts against another without causing injury.	Written reprimand to 14-day suspension Written reprimand to 30-day suspension	14-day suspension to removal 30-day suspension to removal	30-day suspension to removal Removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
c. Hitting, pushing, or other acts against another causing injury.	14-day suspension to removal	Removal	
19. Delay in carrying out or failure to carry out instructions in a reasonable time.	Oral admonishment to removal	Written reprimand to removal	5-day suspension to removal
20. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order.	Written reprimand to 14-day suspension	5-day suspension to removal	Removal
21. Sleeping while on duty.			
a. Where no danger to persons or property is involved.	Oral reprimand to 1-day suspension	Written reprimand to 5-day suspension	5-day suspension to removal
b. Where danger to persons or property is involved.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
22. Negligent performance of duties.			
a. Where damage or waste to Government property is insubstantial.	Oral admonishment to 1-day suspension	Written reprimand to 5-day suspension	5-day suspension to removal
b. Where damage or waste to Government property is substantial.	Written reprimand to 10-day suspension	5-day suspension to removal	14-day suspension to removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<p>23. Offenses related to gambling.</p> <p>a. Participating in an unauthorized gambling activity while on Government premises or in duty status.</p> <p>b. Operating, assisting, or promoting an unauthorized gambling activity while on Government premises or in a duty status or while others involved are in a duty status.</p>	<p>Oral admonishment to 1-day suspension</p> <p>Written reprimand to removal</p>	<p>Written reprimand to 5-day suspension</p> <p>Removal</p>	<p>10-day suspension to removal</p>
24. Unauthorized canvassing, soliciting or peddling on EPA premises.	Oral admonishment to 5-day suspension	Written reprimand to 14-day suspension	10-day suspension to removal
25. Participating in a strike, work stoppage, slowdown, sickout, or other job action.	Removal		
26. Indebtedness where operations or reputation of Agency or its employees are affected..	Oral admonishment to written reprimand	Written reprimand to 5-day suspension	5-day suspension to removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
27. Forging or falsifying official Government records or documents.	Written reprimand to removal	Removal	
28. Borrowing money or obtaining co-signatures from subordinates.	Written reprimand to removal	20-day suspension to removal	Removal
29. Unauthorized carrying of firearms while on EPA premises.	Written reprimand to removal	30-day suspension to removal	Removal
30. Conducting personal affairs while in duty status.	Written reprimand to 1-day suspension	2-day to 10 day suspension	30-day suspension to removal
31. Falsifying time and attendance records for oneself or another employee.	Written reprimand to removal	10-day suspension to removal	Removal

OFFENSES RELATED TO OBSERVANCE OF EMPLOYEE RIGHTS

Nature of Offense	1st Offense	2nd Offense	3rd Offense
32. Sexual harassment.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
33. Discrimination based on race, color, sex, religion, national origin, age, marital status, political affiliation, or handicap.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
34. Interference with an employee's exercise of, or reprisal against an employee for exercising, a right to grieve, appeal, or file a complaint through established procedures.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
35. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent) or the Office of Special Counsel, or to an EEO investigator, or for testifying in an official proceeding.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
36. Reprisal against an employee for exercising a right provided under 5 U.S.C. Chap 71 (governing Federal labor-management relations).	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSES PROSCRIBED IN STATUTE

37. Finding by MSPB of refusal to comply with MSPB order or of violation of statute causing issuance of Special Counsel complaint. [5 U.S.C. 1206 (g) (1) and 1207 (b)]	Written reprimand to removal, debarment from Federal Service not to exceed 5 years, or assessment of civil penalty not to exceed \$1,000.
38. Directing or rendering services not covered by appropriations. [5 U.S.C. 3103]	Removal
39. Prohibited political activity. a. Violation of prohibition against political contributions. [5 U.S.C. 7323] b. Violation of prohibition against campaigning or influencing elections. [5 U.S.C. 7324 and 7325]	Removal 30-day suspension to removal
40. Failure to deposit into the Treasury money accruing from lapsed salaries or from unused appropriations for salaries. [5 U.S.C. 5501]	Removal

41. Soliciting contributions for a gift for a superior; making a donation as a gift to a superior; accepting a gift from an employee receiving less pay. [5 U.S.C. 7351]	Removal
42. Action against national security. [5 U.S.C. 7532]	Suspension to removal
43. Willfully using or authorizing the use of a government passenger motor vehicle or aircraft for other than official purposes. [31 U.S.C. 1344]	30-day suspension to removal
44. Willful concealment, removal, mutilation or destruction of a public record. [18 U.S.C. 2071]	Removal

SAMPLE OFFICIAL REPRIMAND

MEMORANDUM

SUBJECT: Official Reprimand

FROM: (Official Authorized to Effect Action)

TO: (Name of Employee), (Title or Other Designation)

This is a notice that you are officially reprimanded for (offense). (The offense must be specifically described in sufficient detail so that the employee will fully understand the violation, infraction, or other action or omission for which he or she is being reprimanded. In support of the incident, such specifics as time, place, dates and events will be included.) The circumstances which make this reprimand necessary were discussed with you by me (or other individual) on (date).

(In the event the reprimand is a follow-up of previous offenses and the action is considered as a continuation of constructive discipline, the former incidents will be restated and if the employee failed to take any remedial action previously decided upon, that fact shall also be included.)

(The employee shall also be advised as to any specific action required of him or her.)

You may call upon me for any assistance which you may need to help you overcome this deficiency and to avoid future recurrence.

A copy of this reprimand will be filed in your official personnel folder for a period not to exceed two years.

You may file a grievance concerning this action through (Personnel Office will designate applicable grievance system and time limits for filing). You may obtain further information about Agency grievance procedures from _____ in the Personnel Office.